D.B. INCOME TAX APPEAL NO.85/2001.

DATED : 02.01.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.M.S.Singhvi for appellant.
Mr.Sangeet Lodha for the respondent.

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The appeal was admitted on 15.10.2001. The substantial question of law that arises for consideration of this appeal were not framed at the time of admission. The assessee appellant in his memo of appeal has raised following questions as substantial questions of law.

> 1: Whether the learned ITAT was justified in upholding the addition of Rs.32,000/- in the hands of the assessee for the A.Y.1991-92 which represented the cash credits taken by the assessee from one Sri Ramulal and Shri Devendra Sankhla?
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> 2.Whether, the learned ITAT was justified in upholding of addition to the extent of 1/4th of depreciation and Rs.1,000/- on account of expenditure on books and periodicals?

Questions Nos. 3 and 4 referred to an amount in appeal are general and does not relate to any specific subject matter.

So far as question No.2 is concerned we find that the Assessing Officer has considered the claim of the assessee for allowing as deduction the expenses incurred by him on purchase of books, periodicals and stationary for the purposes of his business. However, the Assessing Officer found when inquired to verify the purchases of these items the assessee was unable to produce any material either in the form of vouchers or otherwise to support this claim. In the circumstances, the Assessing Officer disallowed the claim of Rs.2,500/- out of Rs.4,500/- claimed as deduction on this count.

On appeal the CIT [Appeals] sustained the disallowance but on further appeal the Tribunal sustained the disallowance only to the extent of Rs.1,000/-.

Since it is a case in which the verification of explanation of expenses actually incurred was not available and the disallowance of the claim led by the assesssee was made on the estimated basis because of the want of relevant material to sustain actual expenditure incurred on aforesaid items, in our opinion it does not give to any question of law much less substantial questions of law. In the absence of verification of material expenses claimed as deduction as

expenses actually incurred or laid out wholly and exclusively for the purposes of assessee, the reas... to estimation is permissible in law and ... guess work is inherently invoked in such estimation. Hence the extent to which claim of the assessee has been sustained remaining ordinarily a finding of fact. In the facts and circumstances where in the absence of proper material if the Assessing Officer has resorted to estimate and on estimated basis the Tribunal has sustained the certain amount of claim only, it cannot be said to be that disallowance of the claim is founded on no material or irrelevant consideration. Therefore, the finding on that account does not call for interference.

The Question No.1 relates to disallowance on account of cash credits found in the books of the assessee Rs.16,000/- was alleged to have been borrowed to have been by Sri Devendra Sankhla and Rs.16,000/- was allegedly borrowed from one Ramulal. Assessee has produced the confirmation letters from both the creditors and has also produced Sri Devendra Sankhla before the Assessing Officer. Sri Devendra Sankhla on being produced before the Assessing Officer, affirmed that he had given in advance a sum of Rs.16,000/- to the assessee. However, the explanation of the assessee about the receipt of Rs.16,000/- from Devendra Sankhla was rejected on the ground that on inquiry from Devendra Sankhla

the creditor could not satisfactorily explain source wherefrom whether he could have advanced Rs.16,000/-, looking to his income and family expenditures. In other words, the cash credit in the name of Devendra Sankhla was rejected on the ground that the assessee has failed to prove source wherefrom deposit or advance by Sri Devendra Sankhla could be made. This finding has been consistently affirmed by CIT [Appeals] as well as by Tribunal.

We are of the opinion that in rejecting the explanation of the assessee on the undisputed facts is founded on erroneous application of law in the matter. While it was the assessee's burden to furnish explanation relating to such cash credits, the Assessee's burden does not extent beyond proving the existence of the creditor and further proving that such creditor owns to have advanced the amount credited in the account of assessee to him. However, the burden does not go beyond to put the assessee under an obligation to further prove that where from the creditor has got or procured the money to be deposited or advanced to the assessee. The fact that the explanation furnished by the creditor about the source from where he procured the money to be deposited or advanced to the assessee, is not relevant for the purposes of rejecting the explanation furnished by the assessee, and make additions of such deposits as income of the assessee from undisclosed sources by invoking Section 68 of the

Income Tax Act, unless it can be shown by the Department that the source of such money comes from the assessee himself or such source could be traced to the assessee itself. In the present case while existence of Sri Devendra Sankhla the creditor is not in doubt, and he has admitted to have advanced the loan to the assessee. The fact that the explanation furnished Sri Devendra Singh about his source of such advancement has not been accepted by the Revenue Authority cannot lead to any presumption that the source of such advancement by Sri Devendra Sankhla emanated from the assessee. Therefore, additions of Rs.16,000/- in the income of assessee as cash credit in the name of Sri Devendra Sankhla cannot be sustained. Such addition of income of assessee has to be deleted from the income of assessee.

Another Rs.16,000/- has been added to the income of assessee as unexplained cash credit in the name of Sri Ramulal. The assessee has explained that Ramulal who is a Land Tax Inspector has advanced the loan of Rs.16,000/- to him. However, he has also furnished an affidavit purporting to be by Sri Ramu Lal owning said advance to the the assessee. However, the Assessing Officer has found that said Ramulal was not produced for examination when so required by the Assessing Officer. He also found that the assessee has not given correct and complete address of the said Ramulal so

that the efforts could be made through Inspector of Circle to ascertain the genuineness of the creditor. In other words, notwithstanding the filing of affidavit the real existence of the creditor who could come forward to own the deposit or advancement made to the assessee was not proved. In such circumstances, the conclusion drawn by the Assessing Officer that the cash credit standing in the name of Sri Ramulal is not explained to the satisfaction of the Assessing Officer and consequently additions made in the income of assessee is a finding reached on the relevant material. We hasten to add that it may not be taken that in all cases where a creditor is not produced the explanation furnished by the assessee has to be discarded without anything else. For example, if the creditor is an income tax assessee and holds a PAN Number, the mere non-production of the creditor may not by itself entails the presumption about non-existence of the creditor and non-advancement of the loan by him. It depends on facts and circumstances of each case whether the fact about advancement of the amount by a creditor to the assessee has been explained satisfactorily or not.

Once, the fact of advancement has been properly proved it is not further obligation of the assessee to prove the source of source to reject the explanation about such credit with the assessee.

Since, in the present case the Assessing Officer has definitely referred to non-furnishing of complete address of the creditor and that has hampered the inquiry into the correctness of the advance made by the alleged creditor or his existence, the finding reached by the Assessing Officer about unsatisfactorily state of explanation furnished by the assessee about having received Rs.16,000/- from Ramulal and consequential additions of such amount as an income from undisclosed sources of assessee for the Assessment Year in question is a finding of facts founded on relevant consideration. This finding has been successfully sustained by CIT [Appeals] and the Tribunal and it does not given rise to substantial question of law to be examined for reappreciation of the entire evidence in this regard and to reach at a different conclusion. Accordingly, the additions of Rs.16,000/- as unexplained cash credit from Ramulal does not call for interference.

Accordingly this appeal is partly allowed to the extent the addition made on account of unexplained cash credit received from Sri Devendra Sankhla are to be deleted. Other additions challenged by the assessee in this appeal are sustained.

No costs.

[CHATRA RAM JAT]J. **[RAJESH BALIA], J.**

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